IN THE

# Supreme Court of the United States

July Term, 1979

No. 79-56

DR. ROBERT O. NARA, D.D.S.
Petitioner,

v.

MICHIGAN STATE BOARD OF DENTISTRY
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE ~~SUPREME COURT OF THE STATE OF MICHIGAN~~ Mich Ct App

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TO THE HONORABLE, THE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

The Petitioner, Dr. Robert O. Nara, in pro per, prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Michigan entered February 6, 1979 and April 19, 1979, which judgment refused leave to appeal the April 24, 1978, refusal by the Michigan Court of Appeals to grant leave to appeal from the Board of Dentistry of the Michigan State Department of Licensing and Regulation, which Board, on February 6, 1978, suspended Petitioner's license to practice dentistry within the State of Michigan.

## OPINION BELOW

The (unreported) *Final Order* of the Michigan Board of Dentistry, H.O. (Hearing Office) Nrs. 77-32 and 77-68, attached at Exhibit A, suspended Petitioner's (dentistry) license for 90 days and 365 days, consecutively.

The (unreported) order of the Michigan Court of Appeals, COA 78-901 and 78-902 stated in full:

> "In these causes an application for leave to appeal, motion for immediate consideration, and motion for stay of proceedings are filed by plaintiff-appellant, and an answer in opposition thereto having been filed, and due consideration thereof having been had by the Court, IT IS ORDERED that the motion for immediate consideration be, and the same is hereby GRANTED. IT IS FURTHER ORDERED that the application be, and the same is hereby DENIED for lack of merit in the grounds presented.
> IT IS FURTHER ORDERED THAT the motion for stay of proceedings be, and the same is hereby DENIED.

The (unreported) order of the Supreme Court of the State of Michigan, CR 23-198(a)(b)(c), *Robert O. Nara v. Michigan State Board of Dentistry* stated in full:

> "On order of the Court, the application for leave to appeal is considered, and it is DENIED, because the Court is not persuaded that the questions presented should be reviewed by this Court.
>
> The motion for immediate consideration regarding a stay pending appeal is considered and is GRANTED. The motions for stay have become moot by denial of the application and are DENIED.



> Levin, J., would remand to the Court of Appeals as on leave granted."

The (unreported) order of the Supreme Court of the State of Michigan, CR 23-198D, *Robert O. Nara v. Michigan State Board of Dentistry* stated in full:

> "On order of the Court, plaintiff-appellant's application for rehearing is DENIED because GCR 1963, 864.4 provides for the filing of such applications only in opinion cases. Plaintiff-appellant's application is treated as a motion for reconsideration of this Court's order of February 6, 1979, and the motion is DENIED, because it does not appear to the Court that said order was entered erroneously.

## JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. Section 1257(3). Petitioner believes that a conviction, as his, before a quasi-judicial Board created by state statute and armed with criminal enforcement powers, comprising an improper tribunal, is violative of the Sixth and Fourteenth Amendments to the United States Constitution. Petitioner further believes the state to have enacted and enforced a statute permissive of —in the instant case, responsible for —contravention of Amendment Eight to the U.S. Constitution: Revocation of professional license for an inordinate period for reasons other than protection of the public constitutes an excessive fine; greatly in excess of the statutory limit of penalty fine provided under said law and is therefore by common definition an unusual punishment.

Petitioner further believes the operative state law to be in contravention to the First Amendment to the U.S. Constitution. There is disagreement among the states

as to application of this Constitutional guarantee regards advertising by professionals. Moreover, a Federal agency, the Federal Trade Commission (FTC) has now pending before this Court several causes against professional associations: The American Bar Association (ABA), the American Medical Association (AMA) and the American Dental Association (ADA), which causes hinge upon this Constitutional question.

This Court or its inferior branches having cognizance of the matters described, jurisdiction of this Court in the instant matter is invoked under Article Three of the U.S. Constitution.

Petitioner finally believes jurisdiction of this Court is inherent in its supervisory powers over courts below which, through the device of refusing appeal, tacitly consent to the state's abdication of legislative and judicial responsibility by creating, through statute, an administrative quasi-judicial Board having criminal jurisdiction and latitude, through legislation unconstitutionally vague, to interpret governing statute(s) to suit the Board's whim; in essence granting *de facto* legislative powers, most especially when the enabling statute is expressly lacking in requirements protective of Federal law and Constitutional warrants.

## QUESTIONS PRESENTED

1. Shall a state enact or enforce existing laws patently contravening the First Amendment to the U.S. Constitution, when such law(s) manifestly oppose the intent of orders handed down by this Court during process of Federal indictments now pending before this Court?
2. Shall a state enact or enforce law which may be, and usually is, prosecuted in a manner which systematically denies the accused most if not all of the guarantees of the Sixth Amendment to the U.S. Constitution?
3. Shall any state court, through intention or default of supervisory power, allow to stand penalties in contravention to the Eighth Amendment to the U.S. Constitution; thereby tacitly concurring in the state law(s) under which excessive fines and unusual punishment were imposed?
4. Shall any state so interpret Federal law, or create state law, which through intent and ambiguity establishes entire classes within its populace subject to criminal prosecution whose rights, under the Fourteenth Amendment to the U.S. Constitution, are expressly abridged within the letter and intent of the law?
5. Is it permissible in the contemplation of justice that any state supreme court shall elect to be deaf to the appeal of a citizen who seeks to raise, for the first time before an unbiased and lawfully-constituted tribunal, these same questions now brought to this Court's attention?



## CONSTITUTIONAL PROVISIONS INVOLVED

Constitution of the United States, Amendment I:

> "Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof: *or abridging the freedom of speech, or of the press;* * * *"

Constitution of the United States, Amendment VI:

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury * * * and to be informed of the nature

and cause of the accusation: to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Constitution of the United States, Amendment VIII:

"Excessive bail shall not be required, *nor excessive fines imposed, nor* cruel and *unusual punishments inflicted.*"

Constitution of the United States, Amendment XIV:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.*"

Constitution of the United States, Article III:

"Section 1. The judicial power (of the United States) shall extend * * * to controversies to which the United States shall be a party * * *."

"Section 2. * * * In all the other cases before mentioned, the Supreme Court shall have appellate jurisdiction, both as to law and fact, with such exceptions and under such regulations as the Congress shall make."



## STATEMENT OF THE CASE

As an expedient, abbreviated terms will be used throughout to designate these agencies or statutes:

1. Michigan 122 P.A. 1939, as amended, being the Dental Practices Act: Hereafter, "the Act," or "Dental Act."
2. The Supreme Court of the State of Michigan: Hereafter, "State Supreme Court."
3. The Michigan Court of Appeals: Hereafter, "Appellate Court."
4. The Department of Licensing and Regulation of the State of Michigan: Hereafter, "the Department."
5. Case Numbers of the Department, e.g. "Hearing Office No._____,": Hereafter, "H.O. No."
6. The Board of Dentistry of the Department: Hereafter, "the Board" or "the State Board."
7. The American Dental Association: Hereafter, the ADA.
8. The Michigan Dental Association: Hereafter, the MDA.
9. The Federal Trade Commission: Hereafter, the FTC.
10. The administrative judge appointed by the Department as Preliminary Hearing Examiner: Hereafter, "Hearing Examiner."

Petitioner, Robert O. Nara, a practicing dentist licensed within the State of Michigan for over 17 years at the time, was charged on January 5, 1977, with two violations of the Dental Act (MCLA 338.201 et seq):

1. That he had allowed an unlicensed person to perform dental prophylaxis (cleaning teeth) upon members of the public, and

2. That he had caused the following advertisement to be placed in the Houghton-Hancock (Michigan) telephone directory Yellow Pages:

   Specializing in Oramedics — for people with teeth who want to keep them.

Formal Hearings were scheduled for July 26, 1977, upon the matters above, being entitled H.O. 77-32 and H.O. 77-68, respectively, the causes to be combined in the one Hearing.

At the Hearing, Appellant argued that he had been deprived of an opportunity to show compliance as provided in Michigan law:

"Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. *The licensee shall be given an opportunity to show compliance* with all lawful requirements for retention of license * * *."

-MCLA 24.292: MSA 3.560(192)

The Hearing Examiner found Petitioner to have been improperly served on January 27, 1977, with the "Complaint and Opportunity to Show Compliance," and an informal Compliance Hearing was scheduled in Ann Arbor, Michigan on August 22, 1977. At that hearing, Petitioner agreed to do all things necessary to satisfy the Board that he would comply and on the following day, through his attorney, Petitioner's letter of compliance was sent as a matter of record to the Board.

Nevertheless, the Board held that no compliance had been shown and scheduled formal Hearing(s) on these matters for September 27, 1977. Through his



attorney, Petitioner filed, on September 14, 1977, a MOTION TO DISMISS, in support of which he said:

1. That on or about August 22, 1977 in the City of Ann Arbor, Michigan an informal compliance conference was held as required by MCLA 24.292.
2. That at said conference ROBERT O. NARA, D.D.S. offered to correct any and all alleged violations of the Dental Code of the State of Michigan, being MCLA 338.201 et seq and any interpretations thereof.
3. That on or about August 23, 1977, ROBERT O. NARA, D.D.S., by and through his attorney, dispatched a letter to the Michigan State Board of Dentistry, which letter is attached hereto and made a part thereof, whereby said ROBERT O. NARA, D.D.S. again offered and advised that he would correct any and all alleged violations of the Dental Code of the State of Michigan, being MCLA 338.201 et seq and any interpretations thereof.

WHEREFORE ROBERT O. NARA, D.D.S. prays that these matters be dismissed."

This motion was argued at the Hearing on September 27, 1977, before Hearing Examiner Wayne C. Lusk, who denied the motion. The hearing proceeded.

On January 6, 1978, Hearing Examiner Lusk filed with the Board his findings of fact and conclusions of law. (see Appendix A). Mr. Lusk held that Petitioner had, in the Examiner's opinion, violated the Act with respect to allowing an unlicensed person to perform prophylaxis; and that Petitioner had not violated the Act with respect to advertising.

On January 25, 1978, the Board considered Petitioner's case (Board meeting transcript incorpor-

ated at Appendix A). The Board accepted the Hearing Examiner's opinion with regard to unlicensed personnel (H.O. 77-32) and, on this cause, suspended Petitioner's license for 90 days.

The Board then considered the Hearing Examiner's opinion regarding advertising and, by resolution, rejected it. The Board then found Petitioner guilty of "misleading and deceptive, if not fraudulent" advertising and, on this cause, suspended his license for one year, imposition to commence at the conclusion of the above 90 day suspension; thereby imposing a suspension of 15 months.

The Board further ordered that Examiner Lusk never again be assigned to conduct preliminary examinations in matters before the Board.

Following action by the Board, Petitioner attempted to perfect his constitutional guarantees of due process in the Court of Appeals (denied 17 April 1978) and in the Michigan Supreme Court (denied 6 February 1979 and, upon re-application, denied 19 April 1979).

The federal questions raised within this Petition have been asked and ignored below, at the levels of the State Board of Dentistry, the Court of Appeals and the State Supreme Court. In his "Application for Leave to Appeal" from the Court of Appeals to the Supreme Court (May 9, 1978), Petitioner stated, and in his accompanying Brief amplified, these reasons for Appeal:

1. That Appellee failed to properly construe and abide by the provisions of MCLA 24.292; MSA 3.560 (192) and the case of *Rogers v. State Board of Cosmetology*, 68 Mich App 751, and that said Appellee's actions were clearly erroneous and that the action of the Court of Appeals in denying leave to appeal was clearly erroneous and that said decision regarding MCLA 24.292; MSA 3.560 (192)



is of major significance to the jurisprudence of the State of Michigan;

2. That Appellee was not a proper body to decide the guilt or innocence of Appellant, since Appellee is the body which filed the charges against Appellant and that Appellee was otherwise biased and thereby deprived Appellant of due process of law and that Appellee's deciding Appellant's guilt or innocence was clearly erroneous and the action of the Court of Appeals in denying leave to appeal was clearly erroneous and that a decision relative to the hearing tribunal's bias is of major significance to the jurisprudence of the State of Michigan;
3. That the Appellee's actions in enforcing the Dentistry Act being MCLA 338.201 et seq; MSA 14.629 (1) et seq, are in contravention of Federal Antitrust Laws and the enforcement of the Dentistry Act, supra, by Appellee is therefore clearly erroneous and the action of the Court of Appeals in denying leave to appeal was clearly erroneous and that a decision regarding the enforceability of the Dentistry Act, supra, in light of its anti-competition effect is of significance to the jurisprudence of the State of Michigan;
4. That the Appellee's actions in enforcing Section 12 of the Dentistry Act was clearly erroneous in that said section in defining the practice of Dentistry is unconstitutionally vague and overbroad and that the action of the Court of Appeals in denying leave to appeal was clearly erroneous and that the Constitutionality of Section 12 of the Dentistry Act is of significance to the jurisprudence of the State of Michigan;
5. That the advertising ban in the Dentistry Act supra, being Section 8 and Section 17 of said act is unconstitutional in light of *Virginia State Board of*

*Pharmacy v. Virginia Citizen's Consumers Council, Inc.* 425 US 748; 96 S Ct 1817; 48 L Ed 2d 346 (1976) and *Bates v. State Bar of Arizona* 97 S Ct 2691; L Ed 2d (1977) and that the Appellee's enforcement of said Sections of the Dentistry Act, supra, in this case was clearly erroneous and denied Appellant his rights under the First Amendment to the United States Constitution and that the action of the Court of Appeals in denying leave to appeal was clearly erroneous and that a decision regarding proper professional advertising under the Dentistry Act is of major significance to the jurisprudence of the State of Michigan;

6. That the degree of penalty imposed by Appellee was clearly erroneous and that the action of the Court of Appeals was also clearly erroneous in not granting Appellant's Application for Leave to Appeal.

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It may also be noted that the Hon. Noel P. Fox, U.S. District Judge, Western District of Michigan, Northern Division, was apparently satisfied that the case of Nara v. Michigan State Board of Dentistry contained elements worthy of Federal intervention: On May 2, 1977, Judge Fox issued a temporary restraining order enjoining and restraining the State Board from conducting any hearing or hearings concerning Petitioner's case until application for preliminary injunction could be heard in U.S. District Court. This



marked the first and, so far, only Federal intervention of this nature in a state health code violation proceeding, to Petitioner's knowledge or the knowledge of his counsel.

## REASONS FOR GRANTING THE WRIT

1. THE DECISION BELOW IS ABDICATION OF MICHIGAN SUPREME COURT SUPERVISORY POWER; THEREBY SANCTIONING ABROGATION OF CONSTITUTIONAL RIGHTS FOR LICENSEE(S) ACCUSED, BY THE BOARD OF DENTISTRY, OF CRIMINAL VIOLATION.

Michigan laws govern twenty-nine professions, ranging from accountants to undertakers. In seven professions the laws make no mention of conduct; in nine it is defined and in thirteen it is mentioned but not defined. Such disparity in state professional laws is the norm, not the exception; "equal justice" for professionals, under such law, is not possible.

The Dental law of Michigan, however, has one characteristic which makes it unique within the state. It is the *only* professional act, in Michigan, which grants the regulatory body (Board of Dentistry) power to adjudicate guilt or innocence. It says, in part:

> "*Any* person who shall violate *any* provision of this act shall be deemed *guilty* of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500 or by imprisonment in the county jail for not more than 1 year, or by both such fine and imprisonment in the discretion of the court."

"Any person" means any dentist; *any* provision means any charge brought by the Board. Section 218 of the Act says the Board may revoke or suspend a license if a dentist "is guilty" of charges alleged in any of its subsections.

Throughout section 219 of the Act the dentist facing the Board is referred to as "the accused." Sub-section 4 reads: "If the accused pleads guilty or is found guilty



of any of the charges made..."

In Michigan, only the Dental Practice Act lays such manifest criminal stress on guilt; no other state profession is treated in this criminal fashion. This law, therefore, puts dentists at the mercy of criminal charges, with criminal penalties, and with criminal findings of fact as to "guilt" or pleas of guilt—but without any of the Constitutional protections normally accorded the lowest criminal accused of most heinous crime:

- —The law does not allow a jury trial for dentists;
- —The law does not specify the standard of proof required;
- —The law does not require instructions in the law to be given to the finder of fact;
- —The law does not require the Board to accept the findings of the unbiased preliminary Hearing Examiner;
- —The law, in fact, does not even require an examination;
- —The law does not require disqualification of any Board member for any of the reasons usually considered in selection of jurors in criminal proceedings;
- —The law allows, but *does not require,* that a dentist tried, found guilty and punished by the Board may petition higher courts on appeal.

On February 20, 1975, attorney Richard Durant of Durant, Talbot, Grant & McQuarrie (Detroit, Michigan) filed a brief of Amicus Curiae in a case then pending before the Board of Dentistry (W.T. Grady, H.O. No. 74-250-80). Mr. Durant went to the heart of the defective law when he said,

"It is the position of your amicus curiae that no

dentist, no member of the profession, should subject a fellow member to the loss of the rights we accord the common rapist or murderer.

"It is my professional belief that the Dental Practices Act is so deficient in constitutional protection for every dentist that the members of this Board should refuse to bring in verdicts except in the most flagrant cases, until the law is changed.

"Failing that, the very least this Board can do is apply the "beyond a reasonable doubt" theory to the utmost. If there is any theory consistent with innocence, the constitutional protections require a verdict of not guilty...

"It was precisely to avoid the misuse of power that we have developed the protections in the constitution. And dentists, under the present Act, *have alone among all (Michigan) professions been stripped of that protection.*"

Petitioner holds that given criminal laws of constitutionally defective ambiguity, wielded by an administrative body of manifestly incompetent composition—being, as it is, both judge and jury—the supervisory courts of the State of Michigan have an obligation in fact (if not in present law) to *guarantee* the appeal hearing of any dentist whose conviction before the Board is, to him, a miscarriage of justice.



2. THE DECISION BELOW LETS STAND A CONVICTION OF "MISLEADING, DECEPTIVE—IF NOT FRAUDULENT—ADVERTISING," A MATTER TOUCHING UPON NOT ONLY FIRST AMENDMENT PROTECTION, BUT UPON CAUSES NOW BEFORE THIS COURT IN WHICH THE U.S. GOVERNMENT (FTC) IS A PARTY.

First, this Court's interest is invited to the language of the conviction itself: "Misleading and deceptive, if not fraudulent." The question arises: Is it in the interest of justice, or of arrogant bias demonstrated, when the trier of fact renders an opinion of guilt and imposes punishment for an alleged offence "if not fraudulent." IS it; or IS IT NOT? Consider the professional implications facing a career dentist with such an ambiguous finding. Was he guilty—or was he not?

There is conflict among the states regarding the right of professionals to advertise. Moreover, unresolved conflict between the FTC and the ADA is pending in this Court with respect to advertising. Since the ADA has a patently incestuous relationship to the several state boards of dentistry, the boards and the ADA comprised of members who are dentists, the laws of the state will imitate, if not duplicate, the ADA codes of ethics which the FTC seeks to strike down.

In the FTC/ADA conflict, the Federal courts issued a consent order in April, 1979 ordering the ADA to include in its codes a statement which says, in part,

> "Advertising, solicitation of patients or business, or other promotional activities by dentists or dental care delivery organizations shall not be considered unethical or improper..."

In a 1976 FTC suit against the American Bar Association, this Court ruled that attorneys have a

Constitutional right to advertise.

Still pending is a suit, in this Court, seeking to strike down the American Medical Association's restrictions on professional advertising.

In the instant case, the Board's finding of "misleading and deceptive" is, itself, misleading and deceptive. Nowhere on the record below is it alleged or even stated that the issue hinged on truth or falsity of the advertisement in question (supra.) At all times, the operative issue was whether the Petitioner might advertise *at all* under Michigan law. The Hearing Examiner's findings and opinion, in the light of that law, said the advertising did not constitute a violation. The Board reversed that position and said the advertising was a violation.

There is, nowhere below, an allegation of deception or fraud; until the Final Order of the Board. Only here is the *intent* of the advertisement raised; and not as a question to be adjudicated, but as a declarative statement preparatory to imposition of sentence.

Petitioner welcomes a forum, in a genuine court conducted within the rules and decorum of American jurisprudence, in which the question of truth or falsity of his claims may be addressed. It is a fair deduction that if the Board or its unseen mentor, the ADA, considered those claims to be vulnerable, the record below would not be silent concerning this aspect.

Indeed, Petitioner stands ready given any opportunity to defend his claims because he believes no less than the oral health of this nation and its future public lies in balance. His advertisement said: "Oramedics—for people with teeth who want to keep them."

The MDA, the ADA and/or the State Board have never questioned, publicly, whether that advertisement is false, misleading, deceptive (or just maybe) fraudulent.



Nor is that the question before this Court; since the record below only goes to whether the advertisement was permissible at law—veracity aside— a question which was answered "yes" by the Department's trained legal Hearing Examiner, and "no" by the board which brought the charge, tried the facts, reversed the Examiner, acted as jury, found the Petitioner guilty and imposed punishment.

Granting this writ, Petitioner believes, will repair the incongruity of a state law openly and continuously able to contravene decisions recently made by this Court and to scoff at this Court's order to the ADA, the agency with an obvious influence upon, and interest in, state dental laws.

3. GRANTING THIS WRIT PROVIDES OPPORTUNITY FOR THIS COURT TO WEIGH WHETHER A STATE MAY DEPEND UPON AMENDMENT X OF THE U.S. CONSTITUTION—BY MISAPPLICATION—TO DISENFRANCHISE CLASSES OF PEOPLE OF SEVERAL SPECIFIC CONSTITUTIONAL RIGHTS.

It has been proposed, below and elsewhere, that the several states have a right, by interpretation of Amendment X of the U.S. Constitution, the so-called "states' rights" amendment, to establish regulation of professional practices within the state(s) without interference from the Federal government or this Court. The interpretation, here emphasized, would be:

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, *are reserved to the States respectively,* or to the people." Petitioner would ask this Court to view this Amendment from a slightly altered frame of reference, being:
>
> "The powers not delegated to the United States by the Constitution, *nor prohibited by it to the States,* are reserved to the States respectively, or to the people."

This is not idle semantics: The State of Michigan has based its dental law upon the apparent assumption that in order to practice dentistry within the state, a licensee must forego these protections, at minimum:

1. In all criminal prosecutions, the accused shall enjoy a speedy and public trial, by an impartial jury * * *.
2. * * * nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The Constitution is specific: "No State shall make or enforce any law which shall abridge the privileges or



immunities of citizens of the United States * * *." Indeed, Amendment IX seems to speak to the "frame of reference" mentioned earlier, as a perspective to Amendment X concerning "states' rights," when it says, "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."

Michigan law would have this Court facing the state's apparent conclusion that dentists practicing within that state are neither "people" nor "citizens of the United States" with respect to the personal rights and immunities held out by the Constitution.

Petitioner believes granting of this writ would provide a focus through which this Court might clarify the position of the United States regarding the right of states to utilize Amendment X to enforce professional regulation; while yet retaining, for individual practitioners, access to fundamental security of personal citizenship rights.

## CONCLUSION

In bringing this issue *pro per,* petitioner pleads that this Court will recognize not so much his ineptitude as an attorney, as the sincerity of his bringing this matter to this point. The Court is asked to consider personal motive: Why are these issues believed, by Petitioner, of import grave enough to take this (for him) extraordinary step?

It has been suggested below and elsewhere that the restoration of Petitioner's license will predate this Court's consideration, thereby making the matter moot.

Petitioner holds that his license—a valuable property—was unlawfully suspended, for a term and under such circumstances as would bring any reasoning person to question whether he had suffered an excessive fine; had been subjected to an unusual punishment.

Restoration of that license signifies nothing more or less than the passage of the term imposed: The sentence has been served. The record below contains language damning to a doctor's reputation, his future: "Misleading and deceptive, if not fraudulent." The record below nowhere establishes that other than through quasi-judicial fiat. This final gross perversion of Petitioner's birthright to even-handed and fair justice is but the punctuation of a star-chamber proceeding which Michigan has simply allowed to stand by refusing right of appeal. The State has implied that the machinery for appeal exists but that Petitioner's use of that machinery is a privilege, not a right: A posture your Petitioner views, as a simple citizen, as an offence against common decency; it is repugnant to anyone who holds, as does this native son of immigrant parenthood, an abiding conviction that there is no duplicity in the words, "O'er the land of the brave, and the home of the free."



Nor are the issues as simple as one doctor's right to continue a 20 year honorable practice. *All* dentists in Michigan are disqualified as citizens by the extant laws and their administration. Where will the finger next point?

Which dentist, in that state, may advertise—and which may not? Using, if he may advertise, which words? Is this state to continue enforcing law based on an ethics code (ADA) which this Court has ordered stricken?

Petitioner asks this Court to consider the manifest purpose of Michigan's dental law, however defective: Is it not intended to protect the public against dentists who are a nuisance at best and dangerous at worst? Gentlemen, at no point in the record below, or elsewhere, will this Court discover *one single complaint* brought by any of the thousands of patients who believe in your Petitioner, as he believes in them.

The complainant below—and in actions brought elsewhere by the dental association—were ever dentists; members of the same profession and Board which subsequently tried him.

Petitioner's advertisement, the cause of a one-year suspension, sought to guide the public (if they so elected) to a dentist whose preoccupation now and for many years has been prevention of disease and protection of people's teeth and oral health. This Court is advised that neither ADA nor the State of Michigan, recognize *any* form of specialty in preventive dentistry. At present, any dentist who wished to inform the public of his stated intention of protecting their health would be instantly in jeopardy identical to that lately experienced by your Petitioner.

The relationship of the ADA to the dental laws and administration of the State of Michigan should be obvious on its face but can be fairly proved in any

reasoned debate in the decorum of a court. Petitioner asks this Court's indulgence in permitting here, by way of illustration, a partial quotation from the transcript of one of the hearings before the dental association, by way of which Petitioner's membership was voided.

Petitioner believes this direct quotation, an interchange between attorney for the association and Petitioner's attorney, to be an accurate representation of the arrogance of organized dentistry toward any law which seeks to restrain that organization's police-state power over the profession.

This exchange between Petitioner's attorney, Mr. Charles R. Goodwin, Esq., and the Michigan Dental Association's attorney, Mr. William Butler, Esq., took place on the transcript of a September 8, 1977, appeal hearing before the Michigan Dental Association Board of Trustees, Lansing, Michigan.

MR. GOODMAN: Thank you. I guess now we are to the heart of what we have all gathered here for. I just want to talk about the Supreme Court decisions based on this issue and my feelings as to what this Board is about to decide and the ability or their legality in deciding it.

MR. BUTLER: Mr. Chairman, I wonder if I might make one suggestion. We are here before a group of dentists...I think rather than trying to make legal arguments, I would suggest that you (discuss possible error below) so that our record will be complete and these gentlemen can deliberate. I don't want to tell you how to try your case, but they are not judges and lawyers and they really are here to



give Dr. Nara full and complete opportunity and you as his representative of specifically pointing out where, as a dentist, he was mistreated by dentists or where there was error in finding what they did. I don't want to tell you how to try your case, but I don't really think we're going to be too impressed with decisions of the United States Supreme Court.

MR. GOODMAN: I don't know why not. Everybody else is. I sure am. I would hate to tell Justice Burger I wasn't impressed by his opinions.

I would like to tell you, before you get to the merits, I really think you should have the benefit of the law. If a person brings another person on trial for witch burning and the guy says, "We're not concerned with why you can't bring people in for trial for witch burning anymore, but we're concerned with the fact of whether or not you burned a witch," I think there are some gross things missing from that type of hearing, and I think everybody should, before they proceed, should have the benefit of knowing what the current status of the law is so you know what kind of environment you are proceeding under.

If you don't want that and want to go full force into it—

MR. BUTLER: I would suggest it. Let's go full force into it. * * *

Petitioner finally believes that perhaps the most cogent purpose of this writ may appear nowhere below but may be of lasting, vital significance to the People of the United States. Nowhere below is Petitioner's advertising discussed as to substance. "For people with teeth who want to keep them." The implication, if true, is awesome: Is there a means at hand to prevent dental disease for tens of thousands? Nowhere below is the term "Oramedics" defined or discussed; nor probably can it be amplified before this Court.

Organized dentistry, enforcing its ban on advertising through the terrible power of a sovereign state, has prevented "trial" of this larger issue in any public forum. Petitioner could provide this Court with persuasive evidence that there lies within our reach, today, the effective elimination of dental disease for all who want it, far more safely and less expensively than anything the public now enjoys.

Nowhere below is the question fairly and simply asked, "Is this the truth?" That question is not asked, before this Court, in this petition. Petitioner asks instead a rhetorical question:

"What if it *is* true?"

Can the law of any state within this Union so function as to prevent the advancement of any healing science? This Court will recognize the incredible opposition faced by others, in past, seeking to change the professions: Lister, Pasteur and Morton to name but three; the latter nearly defeated by colleagues who would have prevented him from bringing us anesthesia for surgery. Dr. Morton's profession, incidentally, was dentistry.



Petitioner recognizes the power and judicial scope of this Court. Herein, a petition for certiorari is asked. The Court has other powers. It may be that the most expedient and effective remedy is to simply direct that the State of Michigan hear this matter on appeal, in the forum where it should have properly first appeared.

Petitioner rests before this Court secure in his belief that this Court will not simply add a fourth and final stamp of "no appeal." There must remain in this nation that one stronghold of simple justice where any citizen—even a dentist—can expect the equal protection of the laws.

Respectfully,

Robert O. Nara

## APPENDIX

Exhibits:

*OPINION and FINDINGS OF FACT*, State of Michigan, Department of Licensing and Regulation, Administrative Law Services Office, in the matter of ROBERT O. NARA, D.D.S., H.O. No. 77-32 & 77-68.

EXCERPT from 1-30-78 draft MINUTES of the MICHIGAN STATE BOARD of DENTISTRY, meeting January 25, 1978.

FINAL ORDER of the State of Michigan DEPARTMENT OF LICENSING AND REGULATION *in re:* ROBERT O. NARA, D.D.S., H.O. No. 77-32.

FINAL ORDER of the State of Michigan DEPARTMENT OF LICENSING AND REGULATION *in re:* ROBERT O. NARA, D.D.S., H.O. No. 77-68.



**STATE OF MICHIGAN**

**DEPARTMENT OF LICENSING AND REGULATION**

**ADMINISTRATIVE LAW SERVICES OFFICE**

IN THE MATTER OF

| | |
|---|---|
| ROBERT O. NARA, D.D.S. | H.O. No. 77-32 |
| License No. 7700 | H.O. No. 77-68 |

## OPINION

This matter was heard on July 26, 1977 and September 27, 1977 at the offices of the Department of Licensing and Regulation (hereafter called the 'Department'), at 1033 South Washington and 808 South Washington, Lansing, Michigan, respectively. Wayne C. Lusk presided as Hearing Examiner.

William G. Osgood, D.D.S., a member, and Mrs. Thomas Blandford, a public member, of the Michigan State Board of Dentistry (hereafter called 'Board'), were present on July 26, 1977.

*APPEARANCES:*

Howard C. Marderosian, Assistant Attorney General, on behalf of the Board.

Charles R. Goodman, Attorney at Law, of the firm of Goodman & Jaaskelainen, on behalf of Robert O. Nara, the Licensee, who was present on July 26, 1977.

James G. Jaaskelainen, Attorney at Law, of the firm of Goodman and Jaaskelainen, on behalf of Robert O. Nara, the Licensee, who was present on September 27, 1977.

Licensee and his attorney were not present for the entire proceedings on September 27, 1977.

*SUMMARY OF PROCEEDINGS:*

These proceedings involve two complaints issued by the Board under Act No. 122 of the Public Acts of 1939, as amended (hereafter called 'Act'), H.O. (Hearing Office) No. 77-32 and 77-68.

H.O. No. 77-68 'Complaint' and 'Notice of Opportunity to Show Compliance' were issued by the Board on October 28, 1976. Notice of Hearing issued on December 28, 1976 specified March 11, 1977 as the date of hearing on such complaint.

H.O. No. 77-68 'Complaint' and 'Notice of Opportunity to Show Compliance' were issued by the Board on January 5, 1977. Notice of Hearing issued on February 14, 1977 specified April 18, 1977 as the date of hearing such complaint.

On February 11, 1977, the Board consolidated H.O. No. 77-32 and 77-68 and notified Licensee with respect thereto that the hearing in both matters was scheduled for April 18, 1977.

By Notice of Adjournment issued on February 14, 1977, April 14, 1977 and May 2, 1977, the hearing on H.O. 77-32 and 77-68 was adjourned to April 18, 1977, May 4, 1977 and without date, respectively. By Notice of Rescheduling issued on July 1, 1977, the hearing of this matter was rescheduled to July 26, 1977.

By letter dated July 13, 1977 and sent to the Department Administrative Hearing Officer, the Licensee acknowledged notice of the July 26, 1977 rescheduled hearing date and requested selection of a date sometime in September or October. The Administrative Hearing Officer by letter dated July 18, 1977, advised Licensee his request had been referred to the Board for its determination of whether or not an adjournment could be granted. The Board did not adjourn the hearing pursuant to Licensee's request.

Pursuant to stipulation of the parties, a Separate



Record was made of part of the proceedings held on July 26, 1977. Based upon claims and argument made therein, the Licensee moved for dismissal of the proceedings. The Hearing Examiner denied such motion for reasons stated therein.

In the course of the proceedings held on July 27, 1977, the hearing was adjourned without date.

On July 27, 1977, the Board Administrative Secretary scheduled an informal compliance conference to be held on August 22, 1977. Such conference was held on August 22, 1977.

By 'Notice of Hearing after Informal Conference' issued on August 26, 1977, the hearing of this matter was rescheduled to September 27, 1977. In the Notice, it is stated, in part:

> "YOU ARE HEREBY NOTIFIED that it is the decision of the Board's authorized conferee that you failed to show compliance with licensing requirements at the informal conference.

The licensee filed a Motion to Dismiss this proceeding. The Motion is dated September 14, 1977 and was received by the Board on September 19, 1977. The Hearing Examiner denied such Motion for reasons stated in the record.

*FINDINGS OF FACT:*

I. Robert O. Nara (hereafter called 'Licensee') was heretofore issued a license to practice dentistry by the Board pursuant to the Act and at all times herein mentioned Licensee was and is now licensed as a dentist in the State of Michigan. His license number is 7700.

II. By Rule 13 promulgated under the Act, at all times herein mentioned, the Board recognized the following branches of dentistry referred to as specialists: oral surgery, orthodontics, denture prosthesis, periodontia, dentistry for children, and endodontics.

The Licensee has not been issued a dental specialist license by the Board in any of such branches of dentistry. Oramedics was not a recognized branch of dentistry within the terminology of the Act or specified within the rules promulgated under the Act and a dental specialist license was not granted by the Board in the area of 'Oramedics'.

III. Debra Marshall Kilmer (hereafter 'Marshall'), formerly Debra Marshall, Kilmer being present name by marriage, was employed by Licensee from August, 1975, through October, 1975. As of August 1, 1975, she had completed the 11th grade of high school. She subsequently graduated from Hancock High Schooi in June, 1976. He (sic) present address is Route 1, Box 59-C, Hancock, Michigan 49930. During her employment by Licensee, Marshall performed tasks of phophylaxis and scaling upon the teeth of patients of Licensee. The prophylaxis consisted of polishing patients' teeth with polishing paste and a rubber cup by using a motorized instrument. Such scaling was performed by scraping tartar off patients' teeth with an instrument. Marshall performed such tasks of polishing and scaling on the surface of the teeth of Licensee's patients but Marshall did not scale or polish teeth below the gum line. During such employment, Marshall was not licensed as a dentist, dental hygienist or in any other capacity by the Board. Occasionally, the Licensee was in his dental office when Marshall performed such prophylaxis and scaling services. Marshall was trained to perform such services by persons other than the Licensee. Marshall performed prophylaxis on one Bonnie Johnson on at least three occasions. The Licensee admitted the allegation that Marshall worked for him as an employee and that she polished and cleaned teeth of his patients. The Licensee admitted that Marshall was not licensed under the Act by the State.



IV. Bonnie Johnson (hereafter 'Johnson') residing at 112 Gold Street, Ontonagon, Michigan, was a dental patient of Licensee in the latter part of August, 1975 and September, 1975. Johnson had a total of five or six appointments with Licensee's office and saw the Licensee on the first and last appointments. On her first appointment, the Licensee took Johnson's dental history and X-Rays and explained an 'Oramedics' program to her as being 'dental care so that eventually you wouldn't have to wear dentures—that you kept your own teeth'. She was also shown a film, filled out a questionnaire and informed by Licensee of instructional aids as to brushing teeth properly, flossing teeth, proper diet and regular dental check-ups. On at least three appointments Johnson received prophylaxis treatment by Marshall. Such treatment consisted of applications of a red substance on her teeth to disclose tartar and cleaning of her teeth with instruments.

V. On August 24, 1976, the Licensee placed with the Michigan Bell Telephone Company the following listing (hereinafter 'listing') in the Yellow Pages of the 1976-77 Michigan Bell Telephone Directory, for the Houghton-Keweenaw Counties:

"NARA ROBERT O
Specializing in Oramedics--For
People With Teeth Who Want To
Keep Them
200 E Montezuma Houghtn.....482-3530

The listing appears on page 41 of such directory. The Licensee admitted that he placed the listing.

VI. Thomas A. Vuchetich is licensed as a dentist by the Board. He graduated from the University of Detroit Dental School in 1973. He practiced dentistry in Dearborn, Michigan for 8 months and since June, 1974, has continuously practiced in East Lansing, Michigan. In his dental education he took courses in dental

specialties of oral surgery, endodontics, periodontics, prosthetics, both affixed and removable prosthetics. He is a general practitioner and is not licensed in a dental specialty by the Board. He has read material within the trade regarding recent developments in the dental profession. Vuchetich does not know any specialty in dentistry referred to as 'Oramedics' and the term 'Oramedics' has no significance to him.

*CONCLUSIONS OF LAW:*

PART A

The Act, in pertinent part, provides:

"Sec. 12. A person practices dentistry, within the meaning of this act, when it is shown:

"***

"(3) That he performs dental operations of any kind gratuitously, or for a fee, gift, compensation, or reward, paid or to be paid to himself, to another person, or agency.

"***

"(6) That he offers and undertakes, by any means or method, to diagnose, treat, or remove stains or accretions from human teeth or jaws."

"Sec. 18. The board shall suspend for a limited period or revoke the license of a licensed dentist ... for any of the following reasons:

"***

"(e) For conducting the practice of dentistry so as to permit directly or indirectly an unlicensed person to perform work which under this act can legally be done only by persons licensed under this act."

The acts of Marshall of performing prophylaxis and



scaling upon teeth of Licensee's patients as hereinbefore described constitute an offering and undertaking to remove stains or accretions from human teeth within the meaning of Section 12(6) of the Act for the following reasons. The Licensee's admission that Marshall cleaned and polished his patient's teeth coupled with Marshall's testimony that she performed prophylaxis by polishing such patients' teeth and Johnson's testimony that she received such prophylaxis by Marshall substantiates that Marshall performed acts to remove stains from human teeth of Licensee's patients. Marshall's testimony that she scaled teeth of Licensee's patients by scraping tartar therefrom with an instrument substantiates that she performed acts to remove accretions from human teeth because the scaling, as described and performed by Marshall, is the removal of accretions from human teeth.

Inasmuch as the above-described and undertaken acts of prophylaxis and scaling were performed by Marshall, such conduct constitutes performance of dental operations within the meaning of Section 12(3) of the Act.

Marshall's testimony and Licensee's admission substantiate that Marshall was not licensed in any capacity under the Act from August through October, 1975. Licensee's admission that Marshall was employed by and worked for him and polished and cleaned his patients' teeth, coupled with Marshall's testimony that Licensee was occasionally in the office when she performed prophylaxis or scaling services on Licensee's patients substantiates that Licensee permitted her to perform such services. Therefore, Licensee's conduct of permitting Marshall to perform work, consisting of performing scaling and prophylaxis upon his patient's teeth during the summer months of 1975, beginning in August thereof, constitutes a violation of Section 18(e) of the Act.

## PART B

The Act, in pertinent part, provides:

"Sec. 8. No dentist shall announce or hold himself out to the public as limiting his practice to, or as being especially qualified in, or as giving special attention to, any branch of dentistry, without first having obtained a license therefor from the board as hereinafter provided. ..."

"Sec. 17. Excepting as in this act provided, it is unlawful for dentists to:

"(1) Make use of any advertising statements of a character tending to mislead or deceive the public.

"(2) Circulate any statement as to the skill or method of practicing dentistry of any dentist through any media, means, agencies or devices of an advertising nature.

"(3) Advertise professional superiority or the performance of professional services in a superior manner."

"Sec. 18 The board shall suspend for a limited period or revoke the license of a licensed dentist ... for any of the following reasons:

"***

"(m) For holding himself out as specially qualified in, or limiting his practice to, or giving special attention to, a branch of dentistry without a special license therefor.

"***

"(r) For violating or assisting in a violation of a provision of this act."

The evidence does not substantiate that the 'listing' or its placement by the Licensee in the Yellow Pages



constitutes a violation of Section 18(m) of the Act for the following reasons. The evidence substantiates that 'oramedics' was not a 'recognized branch of dentistry' in Michigan and no special license to practice 'oramedics' could then be issued. The testimony of Marshall and Johnson does not establish the nature or meaning of the term 'oramedics' as printed, because their testimony related to events which preceded the placement of the listing by at least 9 months. Therefore, the evidence does not substantiate that 'oramedics', as listed, was a 'branch of dentistry' within the meaning of Section 18(m) of the Act.

The evidence does not substantiate that the listing or its placement by Licensee constitutes a violation of Section 17(2) of the Act because Licensee's skill or method of practicing dentistry is not propounded or described in the listing.

The evidence does not substantiate that the listing or its placement by Licensee constitutes a violation of Section 17(3) of the Act because the listing does not claim professional superiority by Licensee or performance of his professional services in a superior manner by comparison or otherwise.

The evidence does not substantiate that the listing or its placement by Licensee constitutes a violation of Section 17(1) of the Act for the following reasons. Although the Licensee admitted placement of the listing, he did not admit such listing was 'misleading or deceptive'. Board counsel conceded he had an obligation to prove the listing was misleading or deceptive. The evidence substantiates that 'oramedics' was not a recognized branch of dentistry in Michigan, not taught as such in a Michigan dental school and had no significant meaning. The term can mean nothing more than stated or defined in the listing or as shown by the proofs. The language of the listing does not

establish the meaning of the term 'oramedics' as used therein. It does not describe any act or program offered by Licensee in his practice or otherwise. The extrinsic evidence does not establish the meaning of the terms 'oramedics' or 'specializing in oramedics' or the listing as a whole. The testimony of Marshall related to events which occurred in the period from August, 1975 through October, 1975. The testimony of Johnson related to events which occurred in the latter part of August, 1975 and September, 1975. The listing was not placed by Licensee until August 24, 1976. Thus, the testimony of Marshall and Johnson is not sufficient to establish the meaning of the term 'oramedics,' 'specializing in oramedics' or the listing as a whole. There being no other proofs offered as to such meaning, it would only be speculation or conjecture to determine what such terms or the listing meant on and after August 24, 1976.

Because the evidence fails to establish a violation of Sections 17(1), (2) or (3), the evidence fails to establish a violation of Section 18(r) of the Act.

/s/ Wayne C. Lusk
Wayne C. Lusk, Hearing Examiner

Date: January 6, 1978
Lansing, Michigan



Excerpt from 1-30-78 "Unapproved Draft"

MINUTES

of the

Department of Licensing and Regulation

MICHIGAN STATE BOARD OF DENTISTRY

January 25, 1978—320 N. Washington, Lansing, Michigan
Note: Dr. Vernon K. Johnson and Mr. Marderosian, named below, are respectively the President of the State Board of Dentistry and (Howard C.) Marderosian, Assistant Attorney General, State of Michigan, counsel to the Board.

*From Page Six:*

DR. ROBERT O. NARA: Prior to discussion on this matter, Dr. Vernon K. Johnson withdrew from the table and did not participate in any discussion regarding the matter. Mr. Marderosian also excused himself and left the room during the entire discussion. The Board Members had been forwarded a copy of the Transcripts, Exhibits, Conclusion of Law, Finding of Fact, and the Opinion of the Hearing Examiner. All Board Members indicated they had studied the material and were prepared to render a decision.

*Page Seven:*

DR. NARA, Cont.: On Motion of Dr. Cartwright and Support of Mrs. Blandford, the Board unanimously voted to accept Part A of the Hearing Examiners Opinion, which deals with Dr. Nara's use of unlicensed

personnel.
Also in response to Part A of the Hearing Examiners Opinion, it was Moved by Dr. Cartwright and Supported by Dr. Osgood that Dr. Nara's dental license be suspended for a period of 90 days, commencing on February 15, 1978, and that he be placed on probation, following the suspension, for a period of 2 years and that he be required to submit quarterly reports to the Board regarding his use of auxiliary personnel. Roll Call Vote follows:

Dr. Switzer—No Dr. Cartwright—Yes
Mrs. Blandford—Yes Dr. Hoplamazian—Yes
Dr. Chase—No
Dr. Smith—Yes
Dr. Osgood—Yes

MOTION CARRIED

(Dr. Chase requested that the record show his reason for a "no" vote was because he would have voted for a longer period of suspension).

On Part B, on Motion of Dr. Chase and Support of Dr. Cartwright, the Board unanimously voted to reject the Findings of the Hearing Examiner. After further discussion, on Motion of Dr. Chase and Support of Mrs. Blandford, the Board unanimously voted to reject the Hearing Examiner's Opinion, being that it is inconsistent with the provisions of Section 8, Rule 12, Rule 13, and Rule 21 of the Dental Law and the Board does indeed find the advertising to be misleading and deceptive, if not fradulent (sic.). Therefore, on Motion of Dr. Chase and support of Dr. Cartwright, the Board unanimously voted to suspend the dental license of Dr. Nara for a period of 1 year, commencing on May 15, 1978.

After further discussion, on Motion of Dr. Osgood and



Support of Mrs. Blandford, the Board unanimously voted not to use Mr. (Wayne C.) Lusk as a Hearing Examiner in any future hearings before the Board.

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Note: The Minutes of the State Board were lengthy, covering Board discussions of numerous matters. The excerpt above, being taken from pages six and seven of those minutes, contain the complete Board action related to the matter of Dr. Robert O. Nara.

STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATION

IN THE MATTER OF:

ROBERT O. NARA, D.D.S. H.O. No. 77-32
License No. 7700

*FINAL ORDER*

The Board having fully considered the transcript and evidence presented at the hearing in this matter, and after consideration of the Opinion filed herein on January 6, 1978 said Opinion is hereby incorporated and adopted by reference except that Part B of the Conclusion of Law is inapplicable to this matter; and

IT IS ORDERED that pursuant to Part A of the Conclusions of Law, and the Board's authority in Sections 18(e) and 19(4) of the Act, License No. 7700 issued to Robert O. Nara, D.D.S. should be and is hereby SUSPENDED for ninety (90) days effective February 15, 1978; and

FURTHER, IT IS ORDERED that effective May 15, 1978 Robert O. Nara, D.D.S. shall be and is hereby placed on probation for two (2) years during which time he shall submit quarterly reports to the Board regarding his use of auxiliary personnel.

Dated: February 6, 1978 /s/ Aris Hoplamazian D.D.S.
Lansing, Michigan Aris Hoplamazian, D.D.S.
President



STATE OF MICHIGAN

DEPARTMENT OF LICENSING AND REGULATION

IN THE MATTER OF:

ROBERT O. NARA, D.D.S. H.O. No. 77-68
License No. 7700

*FINAL ORDER*

The Board having fully considered the transcript and evidence presented at the hearing in this matter, and after consideration of the Opinion filed herein on January 6, 1978, said Opinion is hereby incorporated and adopted by reference except that Part A of the Conclusions of Law is inapplicable to this matter; and

Further, Part B of the Conclusions are rejected for the reason that it is inconsistent with the provision of Section 8, Section 17(1), and Rules 12, 13 and 21 of the Act and the Board finds the subject advertising misleading and deceptive, if not fraudulent; and

IT IS ORDERED that pursuant to the Board's authority in Sections 18(m), 18(r), and 19(4) of the Act, that License No. 7700 issued to Robert O. Nara, D.D.S. should be and is hereby SUSPENDED for one (1) year effective May 15, 1978.

Dated: February 6, 1978 /s/ Aris Hoplamazian D.D.S
Lansing, Michigan Aris Hoplamazian, D.D.S.
President

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. 79-56

DR. ROBERT O. NARA, D.D.S.

Petitioner,

v.

MICHIGAN STATE BOARD OF DENTISTRY

Respondent.

# ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

# RESPONDENT'S BRIEF IN OPPOSITION

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DATED: August 13, 1979

PRINTED BY SPEAKER-HINES AND THOMAS, INC., LANSING, MICHIGAN—1979

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IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

No. .....

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DR. ROBERT O. NARA, D.D.S.

Petitioner,

v.

MICHIGAN STATE BOARD OF DENTISTRY

Respondent.

---

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MICHIGAN

# RESPONDENT'S BRIEF IN OPPOSITION

## OPINIONS BELOW

The final orders of the Michigan State Board of Dentistry, and orders entered by the Michigan Court of Appeals and Michigan Supreme Court, are set forth by Petitioner.

## STATEMENT OF JURISDICTION

The order of the Michigan Supreme Court was entered on February 6, 1979. A timely petition for rehearing was denied by the Michigan Supreme Court on April 19, 1979. This Court's jurisdiction is invoked under 28 USCA 1257.

## QUESTIONS PRESENTED FOR REVIEW

I

WHETHER DISCIPLINARY PROCEEDINGS HELD BEFORE THE MICHIGAN STATE BOARD OF DENTISTRY, WHICH WERE CONDUCTED PURSUANT TO THE PROVISIONS OF THE DENTISTRY ACT AND THE ADMINISTRATIVE PROCEDURES ACT OF 1969, DENIED PETITIONER DUE PROCESS OF LAW.

II

DOES THE FIRST AMENDMENT TO THE U.S. CONSTITUTION PROHIBIT THE MICHIGAN STATE BOARD OF DENTISTRY FROM INSTITUTING DISCIPLINARY PROCEEDINGS AGAINST ADVERTISEMENTS WHICH ARE ALLEGED TO BE DECEPTIVE AND MISLEADING?

III

DOES THE RECORD SUPPORT PETITIONER'S CONTENTION THAT THE MICHIGAN STATE BOARD OF DENTISTRY WAS NOT AN IMPARTIAL TRIBUNAL BECAUSE SOME OF ITS MEMBERS ARE ALSO MEMBERS OF THE MICHIGAN DENTAL ASSOCIATION AND THE AMERICAN DENTAL ASSOCIATION?

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions are adequately set forth in the petition. This case also involves the following statutes and administrative rules, the text of which appears in the attached statutory appendix:



Michigan Dentistry Act:
1939 PA 122 as amended; MCLA 338.201 et seq; MSA 14.629(1) et seq.

Michigan Administrative Procedures Act of 1969:
1969 PA 306 as amended; MCLA 24.201 et seq; MSA 3.560(101) et seq.

Michigan Administrative Code, 1970-71 Annual Administrative Code Supplement, Rule 338.213.

## STATEMENT OF CASE

On November 18, 1976 the State Board of Dentistry, hereinafter Respondent, filed a complaint against Robert O. Nara, D.D.S., hereinafter Petitioner, for violating section 18(e) of the Dentistry Act, 1939 PA 122, as amended; MCLA 338.201 *et seq;* MSA 14.629(1) *et seq.* The complaint alleged that Petitioner used a person not licensed by Respondent to perform an oral prophylaxis upon dental patients. An oral prophylaxis is a procedure which removes stains and accretions from the human tooth. The provisions of the Dentistry Act, *supra,* require that persons performing such procedure must be licensed by Respondent as a dentist or a dental hygienist.

On January 21, 1977 Respondent filed a second complaint against Petitioner, charging a violation of section 18(m)(r) of the Dentistry Act, *supra.* The complaint is based upon the following advertisement placed in the Houghton-Hancock Michigan Bell Telephone Directory:

"NARA ROBERT O
Specializing in Oramedics—For People With Teeth Who Want To Keep Them
200 E. Montezuma Houghton .....482-3530"

A hearing was scheduled for July 26, 1977. It was determined at the proceedings that an informal compliance conference[1], which is required prior to the institution of formal proceedings, was not conducted. The hearings officer adjourned the formal hearing in order that a compliance conference could be conducted. Following the informal compliance conference, the formal hearing was held on September 27, 1977. The hearings officer submitted his findings of fact and conclusions of law to Respondent on January 6, 1978. Subsequently, on February 6, 1978, Respondent issued two final orders. The first order provided that Petitioner violated section 18(m)(r) of the Dentistry Act, *supra*, and suspended his license for one year effective May 15, 1978. The second order issued by Respondent provided that Petitioner violated section 18(e) of the Dentistry Act, *supra*, and suspended Petitioner's license for ninety days effective September 15, 1978 and placed his license on probation for two years.

Pursuant to section 19(4) of the Dentistry Act, *supra*, Petitioner sought an appeal of the final orders issued by Respondent. Petitioner filed an appeal with the Michigan Court of Appeals, which was denied on April 17, 1978. Petitioner then filed an application for leave to appeal to the Michigan Supreme Court. On February 6, 1979 the Michigan Supreme Court denied Petitioner's application for leave to appeal. Subsequently, Petitioner filed an application for rehearing in the Michigan Supreme Court, which was denied on April 19, 1979.

---

[1] Section 92 of the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq*, requires that prior to a formal hearing, the petitioner be provided "an opportunity to show compliance" (informal compliance conference).



## ARGUMENT

## I

## THE DISCIPLINARY PROCEEDINGS HELD BEFORE THE MICHIGAN STATE BOARD OF DENTISTRY, WHICH WERE CONDUCTED PURSUANT TO THE PROVISIONS OF THE DENTISTRY ACT AND THE ADMINISTRATIVE PROCEDURES ACT OF 1969, DID NOT DENY PETITIONER DUE PROCESS OF LAW.

Petitioner makes many spurious allegations in support of his contention that he was denied due process of law in the disciplinary proceedings but Respondent submits that the record refutes such allegations and shows them to be without merit. The proceedings conducted in the instant matter were held pursuant to the provisions of the Dentistry Act, *supra*, and the Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 *et seq;* MSA 3.560(101) *et seq*, which provide the constitutional guarantees Petitioner claims he was denied.

The State of Michigan has plenary powers to regulate various healing arts, including dentistry. This power includes the right to require practitioners of these arts to obtain licenses as a condition of engaging in practice. In *Semler* v *Oregon State Board of Dental Examiners*, 294 US 608, 611; 55 S Ct 570; 79 L Ed 1086, 1089 (1935), this Court held that a State may, consistent with the requirements of due process, regulate the practice of dentistry:

> "That the State may regulate the practice of dentistry, prescribing the qualifications that are reasonably necessary, and to that end may require licenses and establish supervision by an administrative board, is not open to dispute. Douglas v. Noble, 261 U. S. 165, 67 L. ed. 590,

43 S. Ct. 303; Graves v. Minnesota, 272 U. S. 425, 427, 71 L. ed. 331, 334, 47 S. Ct. 122. . . ."

A fair trial in a fair tribunal is a basic requirement of due process. *In re Merchison,* 349 US 133, 136; 75 S Ct 623; 99 L Ed 2d 942 (1955). Included within this basic requirement, the tribunal should be disinterested to the extent that it is free of any form of bias or predisposition regarding the outcome of the case. *Berger* v *United States,* 255 US 22; 41 S Ct 230; 65 L Ed 431 (1921); *Tumey* v *Ohio,* 273 US 510; 57 S Ct 437; 71 L Ed 749 (1927); *Mayberry* v *Pennsylvania,* 400 US 455; 91 S Ct 499; 27 L Ed 2d 532 (1971). Respondent, as any administrative agency exercising quasi-judicial authority, must act with impartiality. *Humphrey* v *United States,* 295 US 602; 55 S Ct 869; 97 L Ed 1611 (1935). *Withrow* v *Larkin,* 421 US 35; 95 S Ct 1456; 43 L Ed 2d 712 (1975).

Respondent is vested with the authority to regulate the practice of dentistry and to institute disciplinary proceedings against individuals licensed by Respondent for violation of the standard of conduct set forth in the Dentistry Act, *supra.* In the instant case, two complaints were filed against Petitioner. The first complaint alleged that Petitioner violated section 18(e) of the Dentistry Act, *supra,* as he allowed an individual not licensed by Respondent to perform an oral prophylaxis. The provisions of the Dentistry Act, *supra,* require that individuals performing an oral prophylaxis must be licensed by Respondent as a dentist or a dental hygienist. The second complaint charged that Petitioner violated section 18(m)(r) of the Dentistry Act, *supra,* which prohibits a dentist from making statements which tend to mislead or deceive the public, as set forth in section 17 of the Dentistry Act, *supra,* and prohibits a dentist from holding himself out as a specialist unless he is licensed by Respondent.

The hearing held on September 27, 1977 was conducted pursuant to the provisions of the Administrative Procedures Act of 1969, *supra.* The act provides Petitioner with the constitutional protections which he contends have been denied to him. Sections 71 through 87 of the Administrative Procedures Act of 1969, *supra,* set forth the procedure by which the administrative hearing in the instant matter was conducted. The procedure guarantees the Petitioner reasonable notice of the hearing, which includes in part a statement of the charges brought against him. Further, it provides Petitioner with an opportunity to present evidence at the hearing. In addition, it requires that the final order issued by Respondent be supported by competent, material and substantial evidence. The instant case clearly reveals that the record of the proceedings conducted before Respondent comported with the hearing provisions within the Administrative Procedures Act of 1969, *supra,* and Petitioner was not denied due process of law.



At the hearing, evidence was presented to support the allegation that Petitioner allowed an unlicensed person to perform dental procedures which could only be performed by an individual licensed by Respondent. Deborah Marshall Kilmer, an employee of Petitioner from August 1975 through October 1975, testified that Petitioner allowed her to perform prophylaxis and scaling upon the teeth of the patients of Petitioner. The prophylaxis consisted of polishing patients' teeth with polishing paste and a rubber cup by use of a motorized instrument. Further, she testified that she used various dental instruments to scrape tartar off patients' teeth.

Evidence was also presented which established that the advertisement placed by Petitioner in the Michigan Bell Telephone Directory for the Houghton-Hancock area was misleading and deceptive, contrary to section 17 of the Dentistry Act, *supra.* Further, the advertisement was contrary to section 8 of the Dentistry Act, *supra,* as Petitioner announced and held himself out to the public as being specially qualified in a

given area of dentistry without having obtained a license from Respondent.

It should be noted in the instant case that Petitioner did not submit evidence at the hearing refuting the allegations. Petitioner in the instant matter chose to walk out of the hearing and, by doing so, failed to cross-examine any witnesses and further did not present any evidence to refute the allegations [Tr 9-27-77, pp 8-15, 30-32]. There is no evidence in the record to refute the charges regarding Petitioner's unlawful use of unlicensed personnel in his practice. Further, there is no evidence supporting Petitioner's claim that the advertisement was not deceptive and misleading.

Respondent contends that the record of the instant case demonstrates that Petitioner was not denied due process of law.

## II

## THE FIRST AMENDMENT TO THE UNITED STATES CONSTITUTION DOES NOT PROVIDE PROTECTION TO ADVERTISEMENTS WHICH ARE DECEPTIVE AND MISLEADING.

Section 17 of the Dentistry Act, *supra,* defines unlawful advertising practices by dentists. Specifically, section 17 provides in part as follows:

> "Excepting as in this act provided, it is unlawful for dentists to:
>
> "(1) Make use of any advertising statements of a character tending to mislead or deceive the public."



Section 8 of the Dentistry Act, *supra,* prohibits a dentist from advertising that he is a specialist unless licensed by Respondent. Section 8 provides in part:

> "No dentist shall announce or hold himself out to the public as limiting his practice to, or as being especially qualified in, or as giving special attention to, any branch of dentistry, without first having obtained a license therefor from the board as hereinafter provided. . . ."

The complaint filed by Respondent alleged that Petitioner violated sections 8 and 17 of the Dentistry Act, *supra,* thereby entitling Respondent to take disciplinary action against Petitioner pursuant to section 18(m)(r). Petitioner claims that the provisions of the Dentistry Act, *supra,* violate the First Amendment to the United States Constitution, US Const, Am I. Respondent submits that Petitioner's advertising is misleading and deceptive and, therefore, not protected by the First Amendment.

The United States Supreme Court in *Bates* v *Arizona State Bar,* 433 US 350; 97 S Ct 2691; 53 L Ed 2d 810, 835 (1977), recently addressed blanket advertising restrictions by attorneys. The Court found the advertisement published by attorneys to be within the protection of the First Amendment to the United States Constitution, and concluded as follows:

> "In holding that advertising by attorneys may not be subjected to blanket suppression, and that the advertisement at issue is protected, we, of course, do not hold that advertising by attorneys may not be regulated in any way. We mention some of the clearly permissible limitations on advertising not foreclosed by our holding.
>
> "Advertising that is false, deceptive, or misleading of course is subject to restraint. See Virginia Pharmacy

> Board v Virginia Citizens Council, 425 US, at 771-772, and n 24, 48 L Ed 2d 346, 96 S Ct 1817. Since the advertiser knows his product and has a commercial interest in its dissemination, we have little worry that regulation to assure truthfulness will discourage protected speech. . . ."

The Court stated that advertising which is false, deceptive or misleading is subject to valid restraints. See *Virginia Pharmacy Board* v *Virginia Citizens Council*, 425 US 748; 96 S Ct 1817; 48 L Ed 2d 346 (1976).

Respondent contends the advertising in the instant case is misleading and, therefore, not protected by the First Amendment to the United States Constitution. Petitioner advertised that he was specializing in oramedics. The Dentistry Act, *supra*, provides that a dentist may advertise and, if the dentist has a specialty license issued by Respondent, he may advertise the particular specialty. "Oramedics" is not a specialty recognized by Respondent. Members of the public rely on dentists who hold themselves out as specialists as having qualifications beyond those of the general practitioner. Petitioner's advertising of a specialty deceives members of the public as to his qualifications. The fact that oramedics is not a specialty is undisputed on the record. Further, the testimony of Dr. Thomas Vuchetich reveals that the term "oramedics" has no meaning within the dental profession [Tr 9-27-77, pp 27-30].

Petitioner's advertising that he is a specialist in an area not recognized by Respondent is misleading and deceptive and not within the protection of the First Amendment to the United States Constitution.



## III

## THE RECORD DOES NOT SUPPORT PETITIONER'S CONTENTION THAT THE MEMBERS OF THE STATE BOARD OF DENTISTRY SHOULD HAVE DISQUALIFIED THEMSELVES FROM PARTICIPATION IN THE INSTANT MATTER.

Petitioner contends that Respondent is not the proper body to decide disciplinary action. Petitioner argues that Respondent has preconceived ideas as to his guilt or innocence because several individuals on Respondent Board are members of the Michigan Dental Association[2] and the American Dental Association[3]. Petitioner's assertions are based upon litigation instituted by the Federal Trade Commission against the American Dental Association, regarding the Association's code of professional advertising. It is therefore contended by Petitioner that the members of Respondent who belong to the American Dental Association should be disqualified. Respondent submits that Petitioner's claims are without merit and not supported by the record. The record in the instant case contains no evidence supporting Petitioner's claims as Petitioner walked out of the hearing held on September 27, 1977, and failed to present evidence supporting his assertions.

It is beyond dispute that a "fair trial in a fair tribunal" is a basic requirement of due process. *In re Merchison, supra.* This requirement applies to administrative agencies which adjudicate, as well as to courts. *Gibson* v *Berryhill*, 411 US

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[2]

The Michigan Dental Association is a voluntary professional association of dentists in Michigan, and a component of the American Dental Association.

[3]

The American Dental Association is a voluntary professional association of dentists.

564; 93 S Ct 1689; 36 L Ed 2d 488 (1973). Not only is a biased decisionmaker constitutionally unacceptable, but "our system of law has always endeavored to prevent even the probability of unfairness." *In re Merchison, supra;* cf *Tumey* v *Ohio, supra.*

The United States Supreme Court in *Tumey* v *Ohio, supra,* and *Gibson* v *Berryhill, supra,* considered the disqualification of the decisionmaker. In *Tumey* v *Ohio, supra,* the Court held that the village mayor could not sit as a judge on the "liquor court" where he was directly compensated out of fines collected for violations of the state prohibition act. The Court stated as follows:

> ". . . it certainly violates the 14th Amendment and deprives a defendant in a criminal case of due process of law to subject his liberty or property to the judgment of a court, the judge of which has a direct, personal, substantial pecuniary interest in reaching a conclusion against him in his case." 273 US 510, 523

In *Gibson* v *Berryhill, supra,* the Court considered whether the State Board of Optometry, composed of members of an optometric association which excluded salaried optometrists employed by other persons or corporations, had a pecuniary interest in the outcome of proceedings instituted against optometrists for unethical conduct in practicing as employees of a business organization. The record of the lower court proceeding revealed that half of the optometrists practicing in the state were salaried employees of business corporations. If the effort to revoke the license of salaried optometrists succeeded, optometrists engaged in private practice would realize a benefit. The Court stated:

> "Secondly, the District Court determined that the aim of the Board was to revoke the licenses of all optometrists



> in the State who were employed by business corporations such as Lee, and that these optometrists accounted for nearly half of all the optometrists practicing in Alabama. Because the Board of Optometry was composed solely of optometrists in private practice for their own account, the District Court concluded that success in the Board's efforts would possibly rebound to the personal benefit of members of the Board, sufficiently so that in the opinion of the District Court the Board was constitutionally disqualified from hearing the charges filed against the appellees.
>
> "• • •
>
> "It is sufficiently clear from our cases that those with substantial pecuniary interest in legal proceedings should not adjudicate these disputes. Tumey v Ohio, 273 US 510, 71 L Ed 749, 47 S Ct 437, 50 ALR 1243 (1927). And Ward v Village of Monroeville, 409 US 57, 34 L Ed 2d 267, 93 S Ct 80 (1972), indicates that the financial stake need not be as direct or positive as it appeared to be in Tumey. It has also come to be the prevailing view that '[m]ost of the law concerning disqualification because of interest applies with equal force to . . . administrative adjudicators.' K. Davis, Administrative Law Text § 12.04, p 250 (1972), and cases cited. The District Court proceeded on this basis and, applying the standards taken from our cases, concluded that the pecuniary interest of the members of the Board of Optometry had sufficient substance to disqualify them, given the context in which this case arose. As remote as we are from the local realities underlying this case and it being very likely that the District Court has a firmer grasp of the facts and of their significance to the issues presented, we have no good reason on this record to overturn its conclusion and we affirm it." 36 L Ed 2d 488, 500

The record created in this matter fails to disclose the direct interest of the members of Respondent as was present in *Tumey* v *Ohio, supra,* and *Gibson* v *Berryhill, supra.*

## CONCLUSION

Petitioner's license to practice dentistry was suspended by Respondent based on evidence presented that he allowed an unlicensed person to perform dental procedures upon patients which could only be performed by persons licensed by Respondent. Further, Petitioner's license was also suspended upon evidence presented at the hearing that his advertisement was deceptive and misleading. There is no evidence on the record before this Court which would support a contrary conclusion.

The advertisement that Petitioner "specialized in oramedics" is not protected by the First Amendment. The Dentistry Act, *supra,* prohibits a dentist from advertising that he is a specialist unless he has a specialty license issued by Respondent. The evidence at the hearing demonstrated that "oramedics" is not a specialty recognized by Respondent. Members of the public rely on dentists who hold themselves out as specialists as having superior qualifications in a specific area of dentistry. Thus, members of the public viewing the advertisement in question are deceived as to Petitioner's qualifications.

The hearing in this matter was conducted pursuant to the provisions of the Dentistry Act, *supra,* and the Administrative Procedures Act of 1969, *supra.* The procedures for conducting hearings set forth therein comport with due process principles. Petitioner was provided notice of charges and an opportunity for a hearing before a fair and impartial tribunal, at which he



could cross-examine Respondent's witnesses and present evidence supporting his position. The record fails to support Petitioner's claim that he was denied due process of law.

Respectfully submitted,

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DATED: August 13, 1979

# STATUTORY APPENDIX

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**Michigan Dentistry Act, 1939 PA 122, as amended; MCLA 338.201 et seq; MSA 14.629(1) et seq**

**MCLA 338.208**

Sec. 8. No dentist shall announce or hold himself out to the public as limiting his practice to, or as being especially qualified in, or as giving special attention to, any branch of dentistry, without first having obtained a license therefor from the board as hereinafter provided. The board, upon satisfactory proof that the applicant has had a minimum of 1 year of post-graduate work in any one of the several recognized branches of dentistry in an approved college or university, or its equivalent, to be determined by the board, or has complied with any additional requirements of the board, may issue a license to such dentist authorizing such dentist to hold himself out, or to announce, to the public that he is especially qualified in, or limits his practice to, or gives special attention to, such recognized branch of the dental profession. Examinations shall be theoretical and practical. The theoretical examinations shall be in writing and include all the subjects represented in that recognized branch of dentistry in which the applicant desires to specialize. Written examinations may be supplemented by oral examinations. Demonstrations of the applicant's skill shall also be required. A special license shall be required for the practice of each recognized branch of dentistry in order for a dentist to hold himself out to the public as limiting his practice to, or being especially qualified in, or giving special attention to, any branch of dentistry. The fee for such examination and special license shall be $100.00. Any applicant who shall fail to pass an examination shall have the right to apply for a subsequent examination, in which case he shall pay to the secretary a fee of $25.00 for each subsequent examination: Provided, however, That said board may for a sufficient cause remit said fee for such subsequent re-examination.

**MCLA 338.209**

Sec. 9. The board may license dental hygienists. A candidate for examination as a dental hygienist shall pay to the secretary of the board a fee of $15.00 and furnish satisfactory proof that he is a graduate of an accredited high school in this state, or a school of like standing in another state or country, or has in earned units of study the equivalent necessary for graduation and has earned a diploma, or certificate, or the equivalent from a program approved by the board. The board may determine what constitutes an approved program, qualified to educate and train dental hygienists to perform the functions permitted under this act. An applicant who passes the examination shall be licensed as a dental hygienist. An applicant who fails an examination may apply for a subsequent examination upon paying to the secretary a fee of $10.00 for each subsequent examination. The board for sufficient cause may remit the fee for a subsequent reexamination. A licensed dental hygienist may remove accretion and stains including calcareous deposits from the teeth, perform deep scaling, root planing, polish restorations, place and remove surgical dressings, and perform additional functions and operations as the board prescribes by rule. A dental hygienist may operate in the office of a licensed dentist, in a state or municipal institution, in a public school, under a board of health, or in a public clinic authorized by the board, but shall not operate except under the direction of a licensed dentist. The board may revoke or suspend the license of a licensed dentist who permits a dental hygienist operating under his direction to perform any operation other than those permitted under this section or rules promulgated by the board. The board may revoke or suspend the license of a dental hygienist who performs any operation other than those permitted under this section or rules promulgated by the board.



**MCLA 338.212(3) (6)**

Sec. 12. A person practices dentistry, within the meaning of this act, when it is shown:

• • •

(3) That he performs dental operations of any kind gratuitously, or for a fee, gift, compensation, or reward, paid or to be paid to himself, to another person, or agency.

• • •

(6) That he offers and undertakes, by any means or method, to diagnose, treat, or remove stains or accretions from human teeth or jaws.

**MCLA 338.217(1) (2) (3) (14)**

Sec. 17. Excepting as in this act provided, it is unlawful for dentists to:

(1) Make use of any advertising statements of a character tending to mislead or deceive the public.

(2) Circulate any statement as to the skill or method of practicing dentistry of any dentist through any media, means, agencies or devices of an advertising nature.

(3) Advertise professional superiority or the performance of professional services in a superior manner.

• • •

(14) Give a public demonstration of skill or methods of practicing dentistry for the purpose of securing patronage. Any dentist may publicly announce by way of newspaper or professional card that he is engaged in the practice of dentistry, giving his name, degree, office location where

he is actually engaged in practice, office hours, telephone numbers and residence address, and, if he limits his practice to a specialty, he may state same.

**MCLA 338.218(c) (m) (r)**

Sec. 18. The board shall suspend for a limited period or revoke the license of a licensed dentist or licensed dental hygienist or the certificate of a dental assistant, for any of the following reasons:

• • •

(c) For habitually using drugs or intoxicants to the extent of rendering him unfit for the practice of dentistry, dental hygiene, or dental assisting or for gross immorality.

• • •

(m) For holding himself out as specially qualified in, or limiting his practice to, or giving special attention to, a branch of dentistry without a special license therefor.

• • •

(r) For violating or assisting in a violation of a provision of this act.

**MCLA 338.219(1) (2) (4) (5)**

Sec. 19. (1) An accusation against a licensee or certified dental assistant under section 18, except subdivision (a), shall be made in writing, verified by some person familiar with the facts therein stated and 3 copies thereof filed with the secretary of the board. If the board deems that the charges are sufficient, if true, to warrant suspension or revocation of license or certificate for dental assisting, it shall make an order fixing the time and place for a hearing and requiring the accused to appear and answer. The order together with a copy



of the charges shall be served upon the accused at least 30 days before the date fixed for hearing, either in person or by registered mail, sent to his last known post office address. At the time and place fixed in the notice or at any time and place to which the hearing is adjourned, the board shall hear the matter. The accused person shall have the right to be represented at the hearing by counsel.

(2) The president, vice-president, or secretary of the board may administer oaths to witnesses and issue subpoenas after a hearing in circuit court for the attendance of witnesses at the hearing. Upon the request of the accused person, or his counsel, the board shall issue subpoenas for the attendance of witnesses in behalf of the accused. When issued, the subpoenas shall be delivered to the accused person, or his counsel. Process for the attendance of witnesses shall be effective if served upon the person named therein anywhere within this state. At the time of service the fees provided by law for witnesses in civil cases in circuit court shall be paid or tendered to the person. In case of disobedience of a subpoena, the board or any party to the hearing may invoke the aid of a circuit court in requiring the attendance and testimony of witnesses. The circuit court within the jurisdiction of which the hearing is being held may issue an order requiring the person to appear before the board and give evidence touching the matter involved in the hearing. Failure to obey the order of the court may be punished by the court as a contempt.

• • •

(4) If the accused pleads guilty or is found guilty of any of the charges made, the board may revoke or suspend his license for a limited period or place the licensee on probation for a limited period.

(5) The findings of fact made by the board acting within its power, in the absence of fraud, are conclusive. The supreme

court may review questions of law involved in a final decision or determination of the board, if application is made by the aggrieved party within 30 days after the determination by certiorari, mandamus, or by any other method permissible under the rules and practice of the court or the laws of this state. The court may make further orders in respect thereto as justice may require. Pending the review by the supreme court, the action of the board shall be stayed.

**MCLA 338.220**

Sec. 20. Any person who shall violate any provision of this act shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not more than $500.00, or by imprisonment in the county jail for not more than 1 year, or by both such fine and imprisonment in the discretion of the court. After conviction of any violation of any of the provisions of this act, any person who shall again violate any provision of this act, shall be deemed guilty of a felony, and upon conviction thereof shall be punished by a fine of not more than $2,000.00, or by imprisonment in the state prison for not more than 2 years, or by both such fine and imprisonment in the discretion of the court.

**Michigan Administrative Procedures Act of 1969, 1969 PA 306, as amended; MCLA 24.201 et seq; MSA 3.560(101) et seq**

**MCLA 24.271**

Sec. 71. (1) The parties in a contested case shall be given an opportunity for a hearing without undue delay.

(2) The parties shall be given a reasonable notice of the hearing, which notice shall include:

(a) A statement of the date, hour, place and nature of the hearing. Unless otherwise specified in the notice the hearing shall be held at the principal office of the agency.

(b) A statement of the legal authority and jurisdiction under which the hearing is to be held.

(c) A reference to the particular sections of the statutes and rules involved.

(d) A short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is given, the initial notice may state the issues involved. Thereafter on application the agency or other party shall furnish a more definite and detailed statement on the issues.

**MCLA 24.272(3) (4)**

Sec. 72. • • •

(3) The parties shall be given an opportunity to present oral and written arguments on issues of law and policy and an opportunity to present evidence and argument on issues of fact.

(4) A party may cross-examine a witness, including the author of a document prepared by, on behalf of, or for use of the agency and offered in evidence. A party may submit rebuttal evidence.

**MCLA 24.275**

Sec. 75. In a contested case the rules of evidence as applied in a nonjury civil case in circuit court shall be followed as far as practicable, but an agency may admit and give probative effect to evidence of a type commonly relied upon by reasonably prudent men in the conduct of their affairs. Ir-

relevant, immaterial or unduly repetitious evidence may be excluded. Effect shall be given to the rules of privilege recognized by law. Objections to offers of evidence may be made and shall be noted in the record. Subject to these requirements, an agency, for the purpose of expediting hearings and when the interests of the parties will not be substantially prejudiced thereby, may provide in a contested case or by rule for submission of all or part of the evidence in written form.

**MCLA 24.276**

Sec. 76. Evidence in a contested case, including records and documents in possession of an agency of which it desires to avail itself, shall be offered and made a part of the record. Other factual information or evidence shall not be considered in determination of the case, except as permitted under section 77. Documentary evidence may be received in the form of a copy or excerpt, if the original is not readily available, or may be incorporated by reference, if the materials so incorporated are available for examination by the parties. Upon timely request, a party shall be given an opportunity to compare the copy with the original when available.

**MCLA 24.277**

Sec. 77. An agency in a contested case may take official notice of judicially cognizable facts, and may take notice of general, technical or scientific facts within the agency's specialized knowledge. The agency shall notify parties at the earliest practicable time of any noticed fact which pertains to a material disputed issue which is being adjudicated, and on timely request the parties shall be given an opportunity before final decision to dispute the fact or its materiality. An agency may use its experience, technical competence and specialized knowledge in the evaluation of evidence presented to it.



**MCLA 24.280**

Sec. 80. A presiding officer may:

(a) Administer oaths and affirmations.

(b) Sign and issue subpoenas in the name of the agency, requiring attendance and giving of testimony by witnesses and the production of books, papers and other documentary evidence.

(c) Provide for the taking of testimony by deposition.

(d) Regulate the course of the hearings, set the time and place for continued hearings and fix the time for filing of briefs and other documents.

(e) Direct the parties to appear and confer to consider simplification of the issues by consent of the parties.

**MCLA 24.282**

Sec. 82. Unless required for disposition of an ex parte matter authorized by law, a member or employee of an agency assigned to make a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except on notice and opportunity for all parties to participate. This prohibition begins at the time of the notice of hearing. An agency member may communicate with other members of the agency and may have the aid and advice of the agency staff other than the staff which has been or is engaged in investigating or prosecuting functions in connection with the case under consideration or a factually related case. This section does not apply to an agency employee, or party

representative with professional training in accounting, actuarial science, economics, financial analysis or rate-making, in a contested case before the financial institutions bureau, the insurance bureau or the public service commission insofar as the case involves rate-making or financial practices or conditions.

**MCLA 24.285**

Sec. 85. A final decision or order of an agency in a contested case shall be made, within a reasonable period, in writing or stated in the record and shall include findings of fact and conclusions of law. Findings of fact shall be based exclusively on the evidence and on matters officially noticed. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting them. If a party submits proposed findings of fact which would control the decision or order, the decision or order shall include a ruling upon each proposed finding. Each conclusion of law shall be supported by authority or reasoned opinion. A decision or order shall not be made except upon consideration of the record as a whole or such portion thereof as may be cited by any party to the proceeding and as supported by and in accordance with the competent, material and substantial evidence. A copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

**MCLA 24.286**

Sec. 86. (1) An agency shall prepare an official record of a hearing which shall include:

(a) Notices, pleadings, motions and intermediate rulings.

(b) Questions and offers of proof, objections and rulings thereon.



(c) Evidence presented.

(d) Matters officially noticed, except matters so obvious that a statement of them would serve no useful purpose.

(e) Proposed findings and exceptions.

(f) Any decision, opinion, order or report by the officer presiding at the hearing and by the agency.

(2) Oral proceedings at which evidence is presented shall be recorded, but need not be transcribed unless requested by a party who shall pay for the transcription of the portion requested except as otherwise provided by law.

**MCLA 24.292**

Sec. 92. Before the commencement of proceedings for suspension, revocation, annulment, withdrawal, recall, cancellation or amendment of a license, an agency shall give notice, personally or by mail, to the licensee of facts or conduct which warrant the intended action. The licensee shall be given an opportunity to show compliance with all lawful requirements for retention of the license. If the agency finds that the public health, safety or welfare requires emergency action and incorporates this finding in its order, summary suspension of a license may be ordered effective on the date specified in the order or on service of a certified copy of the order on the licensee, whichever is later, and effective during the proceedings. The proceedings shall be promptly commenced and determined.

**Michigan Administrative Code, 1970-1971 Annual Administrative Code Supplement, Rule 338.213**

Rule 13. The Michigan state board of dentistry hereby recognizes the following branches of dentistry which will be referred to as specialists, namely: oral surgery, orthodontics, denture prosthesis, periodontics, endodontics and pedodontics.